

REMARKS

Applicants wish to thank the Examiner for careful consideration given this Application. Claims 1 and 2 are pending in this Application. Claim 1 has been amended. Support for all amendments can be found in the Specification and Claims as originally filed. In particular, support for the amendment to independent Claim 1 can be found on page 9, lines 9-12 of the specification as originally filed. Accordingly, no new matter has been added.

Rejections under 35 U.S.C. 112

Claims 1 and 2 stand rejected under 35 U.S.C. 112, first paragraph for failing to comply with the written description requirement.

The Examiner alleges that the claims contain subject matter which is not described in the specification in such a way as to reasonably convey that the inventors had possession of the claimed invention at the time of filing. In particular, the Examiner again contends that the term "weighted subtraction" is not described in the specification. Applicants respectfully disagree.

First and foremost, independent Claim 1 does not use the term "weighted subtraction", and Applicants assert that all of the terms and limitations provided in amended independent Claim 1 are fully supported by the specification as filed. Accordingly, at least the Examiner's rejection of independent Claim 1 under 35 U.S.C. 112, first paragraph, is rendered moot.

Additionally, Applicants again submit that "weighted subtraction" is a term of art and would be known by the skilled artisan. The Examiner's use of the term "weighted subtraction" in describing the disclosure of Wolf et al. on page 3, lines 22-23 of the Office Action mailed January 22, 2007 and Wolf's use of this term further cooberates Applicants assertion that "weighted subtraction" is a term of art.

Moreover, the method for "weighted subtraction" provided in para 0059 et seq is simply one embodiment of a method for determining the absolute concentration of monomers (M_{STY} , M_{PS} , ect.) from digitalized Raman spectra of individual components ($I_{STY}(\nu)$, $I_{PS}(\nu)$, ect.) using known calibration factors (K_{STY} , K_{PS} , ect.). The absolute

concentration of any component at any time during the polymerization reaction relative to the known concentration of polybutadiene (M_{PB}) can then be used to determine the weight parts (W_{STY} , W_{PS} , ect.). Moreover, Examples 1-3 and Figs 1-3 are exemplary of the described method and provide direct evidence that the method works.

Accordingly, "weighted subtraction" is defined in the Specification as filed sufficiently to reasonably convey to one of ordinary skill in the art that the inventors had possession of the claimed invention at the time the Application was filed. Reconsideration and withdrawal of the Examiner's rejection is respectfully requested.

Claims 1 and 2 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

The Examiner again contends that the term "weighted subtraction" is not defined in the specification as filed and is unclear. Applicants respectfully disagree.

First and foremost, independent Claim 1 does not use the term "weighted subtraction", and Applicants assert that all of the terms and limitations provided in amended independent Claim 1 are fully supported by the specification as filed. Accordingly, at least the Examiner's rejection of independent Claim 1 under 35 U.S.C. 112, second paragraph, is rendered moot.

Moreover, for at least the reasons provided hereinabove, Applicants definition for the term "weighted subtraction" provided in the specification as filed is clear and unambiguous. Therefore, the use of the term "weighted subtraction" is supported by the specification as filed. Reconsideration of the Examiner's rejection under 35 U.S.C. 112, second paragraph, of Claim 2 is respectfully requested.

The Examiner further alleges that "at least one acrylonitrile" is unclear. Applicants traverse this rejection. However, in order to advance prosecution, Applicants have amended independent Claim 1 to remove the phrase "at least one" thereby attending to the Examiner's rejection.

Accordingly, Applicants have attended to the Examiner's rejections and respectfully request withdrawal of the rejections under 35 U.S.C. 112, second paragraph.

Rejections under 35 U.S.C. 102

Claims 1 and 2 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. 2003/0119199 to Wolf et al (hereinafter "Wolf") and U.S. Patent Publication No 2003/0130433 to Wenz et al. (hereinafter "Wenz").

It is well settled that in order for a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in prior art. The disclosure requirement under 35 U.S.C. 102 presupposes knowledge of one skilled in art of claimed invention, but such presumed knowledge does not grant license to read into prior art reference teachings that are not there. See Motorola Inc. v. Interdigital Technology Corp. 43 USPQ2d 1481 (1997 CAFC).

Neither Wolf nor Wenz teach or suggest a process for producing ABS graft polymers wherein the concentration of unpolymerized styrene is maintained at a concentration of less than 12% by weight based on the weight of the polybutadiene as recited in amended independent Claim 1. Therefore, neither Wolf nor Wenz teach or suggest each and every element of amended independent Claim 1. Accordingly, these references fail to anticipate amended independent Claim 1.

Claim 2 directly depends from and adds further limitations to amended independent Claim 1 and is respectfully deemed allowable at least for the same reasons in combination with amended independent Claim 1. Reconsideration and withdrawal of the Examiner's rejections is respectfully requested.

Double Patenting

Claims 1-5 stand provisionally rejected on the grounds of nonstatutory double patenting over Claims 1-15 of co-pending Application No. 10/281,345.

Applicants submit that Application No. 10/281,345 is pending. Allowable subject matter, notwithstanding the provisional obviousness-type double patenting rejection, has not been indicated in any of the pending applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is named between two applications, MPEP § 104(I)(B) states that "if the 'provisional' double

patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the provisional rejection in the other application in a double patenting rejection at the time the one application issues as a patent." Here, it is not evident which of the pending applications will become allowable first, and any action by Applicants or the Examiner with this regard is premature. Accordingly, Applicants request reconsideration of the Examiner's rejection.

Rejection under 35 U.S.C. 103

Claims 1 and 2 stand rejected under 35 U.S.C. 103(a) as being unpatentable over British Patent No. GB 1 200 414 to Monsanto in view of U.S. Patent No. 6,278,518 to Schrof et al. (hereinafter "Schrof") and/or U.S. Patent Publication No. 2002/0156205 to Long et al. (hereinafter "Long").

It is well settled that to establish a *prima facie* case of obviousness, the USPTO must satisfy all of the following requirements. First, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or to combine references. *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Second, the proposed modification must have a reasonable expectation of success, as determined from the vantage point of one of ordinary skill in the art at the time the invention was made. *Amgen v. Chugai Pharmaceutical Co.* 18 USPQ 2d 1016, 1023 (Fed Cir, 1991), cert. denied 502 U.S. 856 (1991). Third, the prior art reference or combination of references must teach or suggest all of the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496, (CCPA 1970).

The Examiner concedes that Monsanto describes a process for producing ABS in which monomer addition is controlled but does not disclose the use of Raman spectroscopy for monitoring the reaction, and alleges that it would have been obvious to monitor the process of Monsanto using Raman spectroscopy as described by Schrof and/or Long. Applicants respectfully disagree.

Monsanto fails to teach or suggest a method in which styrene and acrylonitrile are polymerized in the presence of a polybutadiene graft base, and Schrof and/or Long fail to cure this deficiency. In particular, Monsanto clearly teaches in a first step that a diene polymer latex is prepared wherein "at least 60 % by weight conversion" of "at least one conjugated diene alone or in admixture with... monoethylenically unsaturated monomers". Therefore, Monsanto teaches that a polymer latex of polybutadiene alone or a copolymer of acrylonitrile and polybutadiene be used as the graft base. Monsanto provides no teaching or suggestion to prepare a monomer mixture of styrene and acrylonitrile and combine this mixture with polybutadiene to prepare an ABS graft polymer, nor does Monsanto provide motivation to modify the process in this way. Schrof and/or Long fail to teach or suggest a process for producing ABS graft polymers and fail to cure the deficiencies of Monsanto. Therefore, this combination of references fails to teach or suggest all of the limitations of amended independent Claim 1. Accordingly, this combination of references fails to render amended independent Claim 1 obvious.

Claim 2 depends from and adds further limitations to amended independent Claim 1 and is respectfully deemed allowable at least for the same reasons in combination with amended independent Claim 1. Reconsideration and withdrawal of the Examiner's rejection is respectfully requested.

Applicants submit that the pending claims are in condition for allowance and notice to such effect is respectfully requested. Should the Examiner have any questions regarding this application, the Examiner is invited to initiate a telephone conference with the undersigned.

The USPTO is hereby authorized to charge any fees, including any fees for an extension of time or those under 37 CFR 1.16 or 1.17, which may be required by this paper, and/or to credit any overpayments to Deposit Account No. 50-2527.

Respectfully submitted,

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